

12.809 COURT ORDERS FOR TELEPHONE RECORDS

References:

United States Code (USC) 18USC2510-18USC2522, et al - Federal Wiretap Statutes
 18USC2703 - Release of Subscriber Information to Law Enforcement under Court Order
 18USC3127 - Authority to issue orders pursuant to 18 USC 2703
 Ohio Revised Code (ORC) 2933.52 - Interception of wire, oral or electronic communications
 ORC 2933.53 - Application for Interception Warrant
 ORC 2933.56 - Contents of warrant; sealing of application and warrant; disclosure; retention
 ORC 2933.58 - Instructions to investigative officers; procedures for interception; territorial validity
 ORC 2933.59 - Execution of warrant or oral order; recording or resume; termination; tampering; destruction of documents; disclosure
 ORC 2933.61 - Service of inventory on intercepted persons; inspection of materials
 ORC 2933.64 - Training in wiretapping and electronic surveillance
 ORC 2933.65 - Civil and criminal actions for violations
 ORC 2933.76 - Authorization of use of a pen register or trap and trace device
 ORC 2933.77 - Authorization for TSP to charge for services outside of the normal course of business and for technical assistance and equipment
 Procedure 17.100 - Record Storage
 Standards Manual – 42.2

Definitions:

On Line Listing Information (OLLI) – Provides subscriber name, address, and zip code on published telephone numbers in the Cincinnati Bell service area. No court order required.

Dialed Number Recorder (DNR) – Equipment installed at service provider's Central Office. Electronically traps numbers dialed from a target location. Requires monitoring and additional equipment. Incoming call data can be received if the target line has Caller ID service and the equipment is enabled to capture such data.

Pen Register – Same as a Dialed Number Recorder

Trap and Trace (T&T) – Software programming by provider at the switch, which records numbers dialed into a target's phone (Incoming Calls). By using Pen Register and Trap and Trace together both incoming and outgoing calls will be identified.

Non-Published number – Unlisted telephone service: Subscriber name, and address on non-published telephone numbers requires a court order. There is no cost for this service.

Call Termination Study - Provides a list of telephone numbers, which are terminating at a designated location. Not all calls will be recorded depending on the volume of calls.

Pre-paid Account - Service is provided to a subscriber, who has pre-paid their account. Usually seen where minutes are purchased on a particular cell phone number. Subscriber information is not confirmed by service provided, thus information is not reliable. Any name can be provided to service provider for subscription. Court order is required.

Telecommunications Service Provider (TSP) – Company responsible for the transmission of communications through either land or cellular capabilities. Includes Cincinnati Bell, Ameritech, Cingular, Nextel, Sprint, Verizon, etc.

Purpose:

Clarify the responsibility of officers and supervisors in requesting court orders for telephone records. To identify the Intelligence Unit as the Unit responsible for writing court orders, providing requesting units with instructions for getting them signed, serving them on the affected telephone company, receiving returns from the telephone company, and keeping a master file of all court orders. The Intelligence Unit has the only state certified officers to perform the service required in court orders for certain telephone records.

Policy:

Requests for court orders for telephone records pursuant to 18USC2703 will only be made in connection with a legitimate criminal inquiry. Requesting officers will provide the information as requested by the Intelligence Unit. Records obtained pursuant to a court order will only be used for criminal investigations and will be maintained in a manner which prevents the release of such information to anyone not involved in the investigation or criminal prosecution.

Information:

A Criminal Judge of Common Pleas must sign all telephone record court orders.

All telephone court orders require the following information on the affidavit:

A requesting officer needs to provide his name, rank, unit of assignment, working hours, telephone and fax numbers. The officer must include the criminal charge, with the ORC Section number for the investigation, and a brief statement of probable cause.

The probable cause statement must include how the number is involved in the criminal activity and how the requested information will assist law enforcement in the criminal investigation.

Procedure:**A. Requesting Telephone Records**

1. Requests for information on “published” telephone numbers will be made through the Intelligence Unit. Information will be retrieved from OLLI.
2. Requests for information on “non-published” telephone subscribers, toll records for long distance calls, credit information and custom calling features for Cincinnati Bell numbers, subscriber requests for other Telecommunications Service Providers (TSP), and billing records from wireless carriers will require a Common Pleas Court Order.
 - a. The requesting officer must provide the appropriate information to the Intelligence Unit.
 - 1) The Intelligence Unit will complete a Hamilton County Common Pleas Court Order Application and Order. The court order will be addressed to the TSP for the exact records requested.
 - 2) The Intelligence Unit will fax or deliver the application and order to the requesting officer to take to the Hamilton County Common Pleas Court On-Call Criminal Judge. The requesting officer will fax or deliver the signed application and order to the Intelligence Unit. The Intelligence Unit will serve the order on the TSP. Some providers require certified copies, those must be obtained and delivered to the Intelligence Unit.
 - a) Intelligence will advise requesting officer at time of request if a certified copy of the order is needed.
 - 3) Notify the requesting officer in advance if the company involved may require personal service. The requesting officer is responsible to serve personal service orders.
 - 4) When the records are available, the Intelligence Unit will contact the requesting officer to arrange for pick up.
3. Use of Pen Register/Dialed Number Recorder (DNR) or Trap and Trace (T&T)

NOTE: The investigating unit must maintain daily contact with the Intelligence Unit for the duration of the DNR or T&T surveillance. This daily contact is critical to the success of the DNR and T&T surveillance.

- a. Direct requests for DNR and T&T surveillance to the Intelligence Unit Commander. The Intelligence Unit Commander will review the request and obtain the Criminal Investigations Section (CIS) Commander and Investigations Bureau Commander's approval. The requesting officer must supply his name, rank, unit of assignment, and unit supervisor approving the expenditure of funds for the service.
 - 1) In the absence of the Intelligence Unit Commander, the CIS Commander, Investigations Bureau Commander or Police Chief will approve or deny the request.
- b. Subscriber information for target phone(s) will be verified using a Hamilton County Common Pleas Court Order.
- c. An investigator from the requesting unit will be the affiant on all orders. The Intelligence Unit Commander or his designee will assist in drafting the Application and Entry.
 - 1) The Application and Entry will then be presented (for review and approval) to the Criminal Judge of the Court of Common Pleas. Once the order is signed, it will be hand carried to the Intelligence Unit Commander or his designee. **NO EQUIPMENT** will be installed or **TSP ASSISTANCE** provided until the Intelligence Unit Commander has the court order in hand.
- d. The Intelligence Unit Commander or his designee will manage and control any DNR equipment until it is either installed and/or delivered to the telephone service provider's security personnel for installation.
 - 1) The Intelligence Unit Commander will keep the CIS Commander and the Investigations Bureau Commander informed at all times until the investigation is completed.
- e. The Intelligence Unit Commander or his designee will instruct the affiant to hand deliver the Court Entry to the Hamilton County, Common Pleas, Clerk of Courts Office for filing of the documents.
- f. Upon completion of the investigation, all computer records, hard copies of reports, a copy of the Application and Court Entry and any other records associated with the DNR investigation will be maintained and stored under the Intelligence Unit Commander's direction.
- g. Upon completion of the investigation using the T&T, all computer records, hard copies of reports, a copy of the Application and Court Entry, and any other records associated with the T&T investigation will be strictly maintained, and properly stored under the Intelligence Unit Commander's direction.

- h. Upon completion of the investigation, the Intelligence Unit will complete a Form 630 and route it to Fiscal and Budget Section.

4. Use of Call Termination Studies from Cincinnati Bell

NOTE: Originating and Terminating Call Records for non-billable calls are not routinely kept in the TSP day-to-day records. The TSP is required to have an employee to program the Central Office (CO) switch to generate the call records in response to a court order. The TSP is authorized to bill for such assistance pursuant to ORC 2933.77.

- a. Request for Call Termination Studies will be directed to the Intelligence Unit Commander. The Intelligence Unit Commander will review the request and approve or deny the request. The requesting officer must supply name, rank, unit of assignment, name of his/her unit supervisor approving the expenditure of funds for the service.
 - 1) In the absence of the Intelligence Unit Commander, the Criminal Investigations Section Commander, the Bureau Commander or the Police Chief will approve or deny the request.
- b. Subscriber information for the target phone(s) will be verified using a Common Pleas Court Order, or an Authorized Consent Form signed by the telephone subscriber.
- c. An investigator from the requesting unit will be the affiant on all orders. Intelligence Unit Commander or his/her designee will assist in drafting the Application and Entry. Documents will be reviewed for accuracy.
- d. Upon completion of the investigation, all computer records, hard copies of reports, a copy of the application and court entry, and any other records associated with the investigation will be maintained and stored under the Intelligence Unit Commander's direction.
- e. Upon completion of the investigation, the Intelligence Unit will complete a Form 630 and route it to Fiscal and Budget Section.